

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0028P
Sales Tax
For the Months of February and March 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed for failure to timely file a monthly sales tax return and remit the appropriate tax.

STATEMENT OF FACTS

The taxpayer filed its sales tax returns for the months of February and March 2004 after their respective due dates. The calculated amounts of tax due were remitted with the returns. Accordingly, the department assessed penalties for the taxpayer's failure to timely remit its tax. In his correspondence, the taxpayer's representative requested that the penalties be abated due to reasonable cause.

I. Tax Administration – Penalty

The representative asserts that the taxpayer filed its returns and remitted its tax late due to a combination of unfortunate problems all within an eight-week period. Among these problems were:

- Sales tax software failures
- People, computers, and files were moved to another floor for construction
- A new vice president of tax was appointed
- A new tax compliance manager was appointed
- Four new staff tax preparers were appointed
- Employee medical problems

The taxpayer asserts that any one of the circumstances by itself might not justify the waiver of penalty, but all of them considered together do justify the waiver of penalty. The department disagrees. Even though the taxpayer had several unfortunate circumstances occur at the same

time, all of them were within the scope of what a reasonable person engaged in business might anticipate.

The taxpayer asserts that there are additional reasons that support the abatement of penalty:

- Despite its sales tax compliance problems, the taxpayer continued to file personal property tax returns, business license requirements, and income tax returns for its Indiana stores.
- The taxpayer pays in excess of \$116,000 in annual property taxes
- The taxpayer is a community minded corporate citizen.

The department acknowledges the taxpayer's filing history, contribution to the Indiana economy, and generosity. However, this information is not relevant to proving the absence of negligence and the existence of reasonable cause.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely file the returns in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.